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were minor changes for which the contractor was entitled to compensation if by reason of the increase the excavations exceeded the total quantities.

[Ed. Note.—For other cases, see Highways, Cent. Dig. §§ 349, 351, 352; Dec. Dig. § 113 (4); Contracts, Cent. Dig. § 1335.* 2 Va.-W. Va. Enc. Dig. 872.]

2. Highways (§ 113 (4)*)—Counties—Construction.—Though the contract provided that the material from the excavations was to be used in making fills for the road, and though the contractors had made a lump bid, yet, as the contract provided that excavations should include the removal and placing in embankments of all materials taken from side cuts or borrow pits, as might be directed by the engineer, and that, in case the excavations did not furnish sufficient dirt for embankments, the deficiency should be supplied by widening the excavations or from borrow pits, and, as the engineer deemed that the contractor was entitled to compensation for excavations made from borrow pits, the contractor cannot be defeated in his claim for compensation merely because by change in the location of the road the excavations were increased so as to furnish sufficient material for embankments.

[Ed. Note.—For other cases, see Highways, Cent. Dig. §§ 349, 351, 352; Dec. Dig. § 113 (4).* 12 Va.-W. Va. Enc. Dig. 872.]

Error to Circuit Court, Dickenson County.

Claim by W. D. Bunn & Co. against Dickenson County. The claim was disallowed, and claimants appealed to the circuit court. There was a judgment for the County, and claimants bring error. Reversed.

Bullitt & Chalkley, of Big Stone Gap, and *S. H. & G. C. Sutherland*, of Clintwood, for plaintiff in error.

Chase & Daugherty and *Skeen & Skeen*, all of Clintwood, for defendant in error.

SUTHERLAND et al. v. WAMPLER.

Sept. 11, 1916.

[89 S. E. 875.]

1. Trial (§ 260 (1)*)—Requested Instructions—Harmless Error.—It is the settled rule of the court not to reserve the judgment for the trial court's refusal to give other instructions when it appears that the jury have been correctly and fully instructed

[Ed. Note.—For other cases, see Trial, Cent. Dig. § 651; Dec. Dig. § 260 (1).* 7 Va.-W. Va. Enc. Dig. 715.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

2. Appeal and Error (§ 1041 (5)*)—Discretion of Trial Court—Filing of Pleas.—The time of filing pleas in bar is largely in the discretion of the trial court, and permission to the defendant to file pleas after the pleading of the general issue and when the case was called for trial was not material when not made the ground of a continuance or a postponement of the trial, or prejudicial when the first supplemental plea amounted to a general issue, and the second additional plea was in the nature of a special plea of set-off under Code 1904, § 3299, seeking a recovery against the plaintiff in excess of his demand where the jury gave no recovery over on such special plea.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4106, 4108; Dec. Dig. § 1041 (5).* 1 Va.-W. Va. Enc. Dig. 624.]

3. Appeal and Error (§ 728 (1)*)—Assignment of Error—Sufficiency.—An assignment of error stating that without waiving the various objections to rulings on testimony plaintiff in error would not attempt to take them up in detail, but would insist that in the main they were well taken, that to allow plaintiff on cross-examination to be asked a list of questions objected to and set forth on certain pages of the record served no purpose except to confuse, was too indefinite for consideration.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 3010; Dec. Dig. § 728 (1).* 1 Va.-W. Va. Enc. Dig. 503.]

4. Contracts (§ 328 (1)*)—Action—Right to Recovery.—Where the parties to a contract to saw into lumber certain timber owned by defendant had a settlement in which defendant paid plaintiff's demand for services in full, the plaintiff could not recover in a subsequent suit for an alleged breach of contract.

[Ed. Note.—For other cases, see Contracts, Cent. Dig. §§ 1571-1580, 1583, 1584; Dec. Dig. § 328 (1).* 3 Va.-W. Va. Enc. Dig. 455.]

Error to Circuit Court, Dickenson County.

Action of covenant by J. E. L. Sutherland and another against C. A. Wampler. Judgment for defendant, and plaintiffs bring error. Affirmed.

Sutherland & Sutherland, of Clintwood, for plaintiffs in error.

Chase & Daugherty, of Clintwood, for defendant in error.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.